IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Prabhu Lal Vs. State of Rajasthan & Anr.

S.B.CIVIL WRIT PETITION NO.2808/2007

DATE OF ORDER :: May 25, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Ravindra Singh, for the petitioner.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks a writ of mandamus to the respondents declaring his retrenchment as null and void and directions to the respondents to reinstate him in service from the date of his retrenchment with all consequential benefits and full back wages with interest.

I have heard learned counsel for the petitioner.

The petitioner filed an application under section 33-C (2) of

the Industrial Disputes Act, 1947 (for short `the I.D.Act' hereinafter), which came to be dismissed by the Industrial Disputes and Labour Court, Udaipur (for short `the Labour Court' hereinafter) vide order Annexure-1 dt. 19.3.2005. That order came to be challenged by the petitioner before this Court.

Sub-section (2) of Section 33-C of the I.D.Act provides where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government [within a period not exceeding three months].

The Labour Court dismissed the application under section 33-C (2) of the I.D.Act on the ground that there had not been any award by the Labour Court determining the rights and liabilities of the parties and without there being any reference to the Labour Court for adjudicating the industrial dispute and the award thereon, such a determination cannot be made under section 33-C (2) of the I.D.Act.

In M/s. Fabril Gasosa Vs. Labour Commissioner & ors., AIR 1997 SC 954, explaining the scope of Section 33-C (2) of the I.D.Act, the Hon'ble Apex Court held that the appropriate Government does not have the power to determine the amount due to any workman under sub-section (1) and that determination can only be done by the Labour Court under sub-section (2), or in a reference under Section 10(1) of the Act. Even after the determination is made by the Labour Court under sub-section (2), the amount so determined by the Labour Court can be recovered through the summary and speedy procedure provided by sub-section (2). Sub-section (1) does not control or affect the ambit and operation of sub-section (2) which is wider in scope than sub-section (1). Besides the rights conferred under Section33-C (2) exist in addition to any other mode of recovery which the workman has under the law.

The Power and jurisdictioin of the Labour Court/Industrial Tribunal under Section 33-C (2) of the I.D.Act were dealt with by the Hon'ble Apex Court in Municipal Corporation of Delhi Vs. Ganesh Razak, (1995) 1 SCC 235, wherein the Apex Court held that the Labout Court is devoid of power and jurisdiction to adjudicate upon fresh claim or to give directions on that basis. It was further held that the Labour Court at best has power to interpret the award and then work out the wages payable to the

workman in terms of the award. In Union of India Vs. Gurbachan Singh & Anr., AIR 1997 SC 2641, the Hon'ble Supreme Court reiterated the same view and held that thoguh decision of the Labour Court granting relief to the workman was inconsistent with settled law but in the facts and circumstances of the case, the Apex Court refused to interfere with the same and further directed that the judgment of the High Court or Labour Court should not be treated as precedent for any future cases as it is not consistent with law laid by this Court.

In this view of the matter, in my view, the Labour Court at best has the power to interpret the award and then work out the wages payable to the workman in terms of the award itself. However, it is not open for the Labour Court to adjudicate a claim afresh.

In the instant case, obviously the petitioner has not approached the appropriate Govt. for making a reference of the industrial dispute to the Labour Court and since there had not been any reference to the Labour Court, the Labour Court had not adjudicated the industrial dispute. The application under section 33-C(2) of the I.D. Act was misconceived and the Labour Court was justified in dismissing the application. Hence, calls for no interference.

The writ petition is, therefore, dismissed. It is always open for the petitioner to raise the industrial dispute by moving the Conciliation Officer and if the conciliation proceeding fails, then approach to the appropriate Govt. for referring the dispute for Labour Court. There shall be no order as to costs.

[H.R.PANWAR],J.

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